



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.						
10/675,294	09/30/2003	Richard L. Mueller JR.	ACU-127	5446						
7590	06/29/2007	<table border="1"><tr><td>EXAMINER</td></tr><tr><td>STEPHENS, JACQUELINE F</td></tr><tr><td>ART UNIT</td><td>PAPER NUMBER</td></tr><tr><td colspan="2">3761</td></tr></table>			EXAMINER	STEPHENS, JACQUELINE F	ART UNIT	PAPER NUMBER	3761	
EXAMINER										
STEPHENS, JACQUELINE F										
ART UNIT	PAPER NUMBER									
3761										
		MAIL DATE	DELIVERY MODE							
		06/29/2007	PAPER							

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/675,294

Applicant(s)

MUELLER, RICHARD L.

Examiner

Jacqueline F. Stephens

Art Unit

3761

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 04 April 2007.  
2a) This action is **FINAL**.      2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-7,9-28 and 30-48 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-7,9-28 and 30-48 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

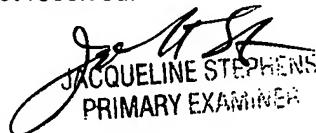
**Application Papers**

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
JACQUELINE STEPHENS  
PRIMARY EXAMINER**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application  
6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 4/4/07 have been fully considered but they are not persuasive. Applicant argues breast elevating module 15 is clearly not a breast stabilizer that surrounds a through aperture that radially compresses at least a portion of the breast as presently claimed. However, it appears that Applicant has set forth brief summaries of the prior art cited against him, but has failed to state how the claims as amended differ from the relevant art. Applicant states that his invention is novel because , but fails to show how the prior art comprises a breast stabilizer as claimed. However, the examiner maintains that Kermode discloses a breast stabilizer in that element 15 is capable of stabilizing the breast and Kermode discloses this element is adjustable as discussed below. Hence, the arguments are not persuasive. The arguments regarding the Hung reference are persuasive.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7, 9-28, 30-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Kermode et al. US 6846218

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

4. As to claims 1, 21, and 42-48, Kermode discloses a kit including a catheter, syringe, nipple orifice dilator, harness, instructions, and method for reducing systemic losses in ductal lavage procedure comprising a base member 16, a through aperture 12 sized to receive a human breast therethrough; and a breast stabilizer 15 integral with the base member and surrounding the through aperture (Figures 1 and 2; col. 6, lines 19-47). The circumference of the breast stabilizer is adjustable (col. 5, lines 1-33).

As to claims 2 and 22, and the base member 16 comprises a torso band 10 having first and second end portions.

As to claims 3-5 and 23-25, the first and second end portions are engageable with each other (Figures 1 and 2).

As to claims 6, 26, and 27, the breast stabilizer is unitary with the base member (Figure 1).

As to claims 7 and 28 the breast stabilizer is made from an elastomeric material (col. 4, lines 64-67).

As to claims 9 and 30 limitation is relative to the size of the breast base diameter. With a larger breast, the aperture is smaller than the breast base diameter.

As to claims 10 and 31 the base member 16 further includes an elongated slit 14.

As to claims 11 and 32 the base member further includes a cover over the slit (col. 6, lines 26-32).

As to claims 12-16 and 33-37 see col. 4, lines 47-51 and col. 5, lines 1-33.

As to claims 17 and 38 see Figure 1, through aperture 12 and slot 14.

As to claims 18-20 and 40-42 see col. 7, lines 2-18.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

June 10, 2007